

Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Bryan W. Shaw, Ph.D., *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

CHIEF CLERKS OFFICE

2008 JUL 18 AM 10:52

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

July 18, 2008

Via Certified Mail, Return Receipt Requested  
Via First Class Mail, Postage Pre-Paid

Mr. Jim Hering, Attorney  
Pakis, Giotes, Page & Burleson, P.C.  
P.O. Box 58  
Waco, Texas 76703-0058  
Article Number 91 7108 2133 3935 1952 7704

Re: Bert Dickens, Inc. dba Vista Ranch Water System  
Docket No. 2007-1862-UCR-E

Dear Mr. Hering:

On June 9, 2008, the Executive Director of the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") issued an Emergency Order pursuant to TEX. WATER CODE chs. 5 and 13, TEX. HEALTH & SAFETY CODE ch. 341, and 30 TEX. ADMIN. CODE chs. 35, 290, and 291. The party made subject to this order is Bert Dickens, Inc. dba Vista Ranch Water System. The Emergency Order renews the appointment of Aqua Water Supply Corporation as temporary manager of the public water system located at the end of Country Way Road, near Smithville, Fayette County, Texas.

Pursuant to TEX. WATER CODE § 5.504 the Commission will consider whether to affirm, modify, or set aside the Emergency Order issued on June 9, 2008. **Therefore, the Executive Director has scheduled this matter to be presented at the Commission's regular Agenda meeting on August 6, 2008.** The Agenda begins at 9:30 a.m. and will be held at **TCEQ Park 35 Complex, 12118 North I-35, Building E, Room 201 S, Austin, Texas.** The enclosed documentation is provided to you as a record of the materials which have been submitted to the Chief Clerk's Office and will be used in the Commission's Agenda process.

Additionally, please be advised that, pursuant to 30 TEX. ADMIN. CODE § 35.25(c), **you may request at the time of the Agenda on August 6, 2008 an evidentiary hearing on issuance of the Emergency Order.** An Administrative Law Judge will be available to conduct a hearing at Agenda on **August 6, 2008**, should you so request. Should you have any questions, please contact the TCEQ Litigation Division at (512) 239-3400.



Mr. Jim Hering  
January 11, 2008  
Page 2

Sincerely,



Dinniah M. Chahin  
Litigation Division MC 175

Enclosures

cc: Mr. Bert Dickens, President, Bert Dickens, Inc., 268 HCR 3315, Hubbard, Texas 76648  
Ms. Geneva Brown Turner, Registered Agent, Bert Dickens, Inc., 801 Washington #800,  
Waco, Texas 76701  
Mr. Robin Lloyd, Lloyd, Gosselink, Blevins, Rochelle, & Townsend, P.C., 816 Congress  
Avenue, Suite 1900, Austin, Texas 78701  
Ms. Carolyn Runyon, Austin Regional Office, MC R-11  
Ms. Yuliya Dunaway, Enforcement Division, R-13  
Mr. Andy Lutringer, Receivership Coordinator, MC 153  
Ms. Dorothy Young, Receivership Coordinator, MC 153  
Mr. Terence Webb, Receivership Coordinator, MC 153  
Mr. Blas Coy, Public Interest Counsel, MC 103  
Office of the Chief Clerk, MC 105  
Agenda Coordinator, Litigation Division, MC 175



**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2007-1862-UCR-E TCEQ ID: RN101220911 CASE NO.: 34918**  
**RESPONDENT NAME: BERT DICKENS, INC. DBA VISTA RANCH WATER SYSTEM**

Page 1 of 3

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input checked="" type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> End of Country Way Road, near Smithville, Fayette County</p> <p><b>TYPE OF OPERATION:</b> Public water supply and retail public utility (Utility)</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There have been two complaints regarding this Facility. There are two pending enforcement cases regarding this facility location, which have been referred to the Office of the Attorney General.</p> <p><b>INTERESTED PARTIES:</b> Two complaints have been filed regarding the Facility. The complainants are not expected to protest or speak at Agenda. No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> Pursuant to TEX. WATER CODE § 7.075, publication is not required for an Emergency Order.</p> <p><b>CONTACTS AND MAILING LIST:</b>  TCEQ Attorney: Ms. Dinniah M. Chahin, Litigation Division, MC 175, (512) 239-0617  TCEQ Enforcement Coordinator: Ms. Yuliya Dunaway, Water Enforcement Section, MC R-13, (210) 490-3096  TCEQ Regional Contact: Ms. Carolyn Runyon, Austin Regional Office, MC R-11, (512) 339-2929  Respondent: Mr. Bert Dickens, President, Bert Dickens, Inc. dba Vista Ranch Water System, 14245 North Highway 6, Valley Mills, Texas 76689  Respondent's Attorney: Mr. Jim Hering, Attorney, Pakis, Giotes, Page &amp; Burleson, P.C., P.O. Box 58, Waco, Texas 76703-0058</p>		

TEXAS  
 COMMISSION  
 ON ENVIRONMENTAL  
 QUALITY  
 2008 JUL 18 AM 10:53  
 CHIEF CLERKS OFFICE

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p>Dates of Complaints Relating to this Case:  May 7, 2007 and May 22, 2007</p> <p>Dates of Investigation Relating to this Case:  May 23, 2007 and September 1, 2007</p> <p>Date of NOE Relating to this Case:  October 10, 2007</p> <p>Background Facts:</p> <p>This public water system was abandoned by Bert Dickens, Inc. on November 15, 2007. Bert Dickens, President of Bert Dickens, Inc. stated to Andy Lutringer, a TCEQ employee, that he has abandoned the public water system. Bert Dickens, Inc. failed to pay the electricity bill in October 2007 and November 2007. During a records review conducted on September 1, 2007, TCEQ staff documented that Bert Dickens, Inc.: 1) failed to collect and submit routine monthly water samples for bacteriological analysis during the months of September 2006, October 2006, November 2006, June 2007, July 2007, and August 2007 and failed to provide public notice of the failure to sample during the months of June 2007, July 2007, and August 2007; 2) failed to collect and submit four repeat samples following a water sample that tested positive for total coliform in April 2007, and failed to provide public notice of the failure to collect and submit the appropriate number of repeat samples; 3) failed to collect at least five routine water samples during the month following a total coliform-positive sample result and failed to provide public notice of the failure to collect the appropriate number of samples in May 2007; and 4) failed to pay all annual and late Public Health Services fees for TCEQ Financial Administration Account No. 90750039 for Fiscal Year 2007.</p> <p>A potential health hazard existed as a result of the abandonment of the Utility. The Utility was not providing a licensed operator for Vista Ranch Water System. On December 14, 2007, the Executive Director issued an Emergency Order appointing Aqua Water Supply Corporation as the Temporary Manager of the Utility. On January 30, 2008, the Commission determined that the Executive Director appropriately issued the Emergency Order. On February 4, 2008, the Executive Director referred the violations against Bert Dickens, Inc. to the Office of the Attorney General to institute a legal action against Bert Dickens, Inc. and to appoint a receiver for the Utility. On February 7, 2008, the Commission issued an Order affirming and modifying the Executive Director's Emergency Order. On June 9, 2008, the Executive Director issued an Emergency Order renewing the appointment of Aqua Water Supply Corporation as the Temporary Manager of the Utility.</p> <p>The Executive Director is requesting approval of the Emergency Order renewing the appointment of Aqua Water Supply Corporation as the Temporary Manager for an additional 180 days.</p>	<p>N/A</p>	<p>Ordering Provisions</p> <ol style="list-style-type: none"> <li>1. Immediately, upon the effective date of this Order, Aqua Water Supply Corporation ("Aqua WSC") shall serve as temporary manager until 180 days after the effective date of the Emergency Order, i.e. December 6, 2008.</li> <li>2. Aqua WSC is authorized to exercise those powers and duties necessary to ensure the continued operations of the Utility and the provision of continuous and adequate services to customers, including the powers and duties set forth in TEX. WATER CODE § 13.4132.</li> <li>3. Aqua WSC's requirement to post financial assurance with the TCEQ in an amount and type acceptable to the Executive Director has been waived by the Executive Director pursuant to 30 TEX. ADMIN. CODE § 291.143(c).</li> <li>4. Aqua WSC's compensation will come from Utility revenues in the amount of fifteen dollars (\$15.00).</li> <li>5. Aqua WSC shall report to the Executive Director on a monthly basis in accordance with 30 TEX. ADMIN. CODE § 291.143(h).</li> </ol>

The Respondent in this case does not owe any penalties according to the Administrative Penalty Database Report.

UCR:

Abandoned operations [TEX. WATER CODE §§ 13.412(f) and 13.4132 and 30 TEX. ADMIN. CODE § 291.142(a) and (c)].



## Compliance History

Customer/Respondent/Owner-Operator:	CN601128515	Bert Dickens, Inc.	Classification:	Rating:
Regulated Entity:	RN101220911	VISTA RANCH WATER SYSTEM	Classification:	Site Rating:
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY		REGISTRATION	0750039
Location:	6115 VISTA RANCH RD, SMITHVILLE, TX, 78957			
TCEQ Region:	REGION 11 - AUSTIN			
Date Compliance History Prepared:	October 29, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	October 29, 2002 to October 29, 2007			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Yuliya Dunaway Phone: (210) 403-4077

### Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

### Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

- N/A Effective Date: 06/12/2003 ADMINORDER 2001-1562-PWS-E
- Classification: Major
- Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(A)
- Description: Failed to submit well completion data.
- Classification: Moderate
- Citation: 30 TAC Chapter 290, SubChapter D 290.43(e)
- Description: Failed to provide a lock for the gate on fence around the ground storage tank and an intruder resistant fence around the pressure tank.
- Classification: Moderate
- Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(O)
- Description: Failed to provide an intruder resistant fence around Well No. 1.
- Classification: Moderate
- Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(N)
- Description: Failed to install a meter at each well site.
- Classification: Moderate
- Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(P)
- Description: Failed to provide an all-weather-access road to Well Nos. 1 and 2.
- Classification: Moderate
- Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(K)
- Description: Failed to seal wellheads and pump bases and provide screened well casing vents.
- Classification: Moderate
- Citation: 30 TAC Chapter 290, SubChapter D 290.44(h)(1)(A)
- 4G THC Chapter 321, SubChapter D 341.033[G]
- Description: Failed to install backflow prevention devices where an actual or potential contamination hazard exists.
- Classification: Moderate
- Citation: 30 TAC Chapter 290, SubChapter D 290.46(d)(2)(A)
- Description: Failed to maintain a free chlorine residual of 0.2 milligrams per liter.
- Classification: Moderate
- Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(2)
- Description: Failed to make the water system's operating records accessible during the investigation.
- Classification: Moderate
- Citation: 30 TAC Chapter 290, SubChapter D 290.42(e)(2)
- Description: Failed to disinfect water before storage.
- Classification: Moderate
- Citation: 30 TAC Chapter 290, SubChapter D 290.42(i)

Description: Failed to use a treatment chemical which conforms to American National Standards Institute/National Sanitation Foundation.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(n)(2)

Description: Failed to make available an accurate, up-to-date map of the distribution system.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(t)

Description: Failed to provide a system ownership sign.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(r)

Description: Failed to maintain a minimum water pressure of 35 psi.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.42(e)(7)

Description: Failed to house the hypochlorination solution containers in a secure enclosure.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(3)

Description: Failed to provide the ground storage tank with a properly constructed overflow.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(4)

Description: Failed to provide the ground storage tank with a liquid level indicator.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(6)

Description: Failed to ensure the storage tank is tight against leakage.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.44(c)

Description: Failed to install required size transmission lines.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.44(a)(4)

Description: Failure to locate water lines a minimum of 24 inches below ground surface.

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

N/A

1	01/18/2006	(452412)
2	10/08/2007	(596907)
3	10/10/2007	(597200)
4	10/10/2007	(597223)
5	10/10/2007	(597228)
6	10/10/2007	(597216)
7	10/10/2007	(597264)
8	10/10/2007	(597265)
9	10/10/2007	(597266)
10	10/25/2007	(597565)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 10/25/2006 (596907)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(II)

Description: 09/2006 - Failure to collect any routine monitoring samples for 09/2006.

Date: 12/21/2006 (597216)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(II)

Description: 11/2006 - Failure to collect any routine monitoring sample(s) in 11/2006.

Date: 01/04/2007 (597200)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(II)

Description: 10/2006 - Failure to collect any routine monitoring sample(s) in 10/2006.

Date: 05/25/2007 (597223)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(3)(A)(II)

Description: 04/2007 - Failure to collect any repeat samples in 04/2007 following a coliform found result.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
 Description: 04/2007 - Failure to post a pn for not collecting any repeat samples in 04/2007 following a coliform found result.  
 Date: 06/25/2007 (597228)  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(F)  
 Description: 05/2007 - Failure to collect all the 5 distribution samples in 05/2007 following a coliform found month.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
 Description: 05/2007 - Failure to post pn for not collecting all the 5 distribution samples in 05/2007 following a coliform found month.  
 Date: 07/30/2007 (597264)  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
 Description: 06/2007 Failure to collect any routine monitoring sample(s) in 06/2007.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
 Description: 06/2007 Failure to post pn for not collecting any routine monitoring sample(s) in 06/2007.  
 Date: 09/10/2007 (597265)  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
 Description: 07/2007 Failure to collect any routine monitoring sample(s) in 07/2007.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
 Description: 07/2007 Failure to post pn for not collecting any routine monitoring sample(s) in 07/2007.  
 Date: 09/19/2007 (597266)  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
 Description: 08/2007 Failure to collect any routine monitoring sample(s) in 08/2007.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
 Description: 08/2007 Failure to post pn for not collecting any routine monitoring sample(s) in 08/2007.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



2008 JUL 18 AM 10: 53

CHIEF CLERKS OFFICE

IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
BERT DICKENS, INC. DBA VISTA  
RANCH WATER SYSTEM;  
RN101220911  
CCN12927

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BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

**ORDER AFFIRMING EMERGENCY ORDER  
DOCKET NO. 2007-1862-UCR-E**

On August 6, 2008 the Texas Commission on Environmental Quality ("TCEQ" or "Commission") considered whether to affirm, modify, or set aside an Emergency Order in the matter regarding Bert Dickens, Inc. dba Vista Ranch Water System ("Bert Dickens, Inc."). The Emergency Order was issued by the Executive Director without a hearing on June 9, 2008. The Emergency Order and the notice of the August 6, 2008 agenda hearing to affirm, modify, or set aside the Emergency Order were: 1) sent by DHL Express Delivery, sent certified mail return receipt requested, and sent first class mail, postage prepaid to Jim Hering, Attorney for Bert Dickens, Inc. on June 9, 2008; 2) sent by DHL Express Delivery, sent certified mail return receipt requested, and sent first class mail, postage prepaid to the last known address of Bert Dickens, President of Bert Dickens, Inc. on June 9, 2008; 3) sent by DHL Express Delivery, sent certified mail return receipt requested, and sent first class mail, postage prepaid to Geneva Brown Turner, Registered Agent for Bert Dickens, Inc. on June 9, 2008; and 4) hand delivered to the last known address of Bert Dickens, Jim Hering, and Geneva Brown Turner on June 11, 2008. The Commission finds that the Executive Director appropriately issued the Emergency Order and that the requirements for an emergency order found in Chapters 5 and 13 of the Texas Water Code have been satisfied.

**THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL  
QUALITY ORDERS THAT:**

The June 9, 2008 Emergency Order, attached hereto as Exhibit A and incorporated into this Order by reference, is affirmed.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

# Exhibit A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY



2008 JUN -9 PM 3:13

CHIEF CLERKS OFFICE

DOCKET NO. 2007-1862-UCR-E

IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
BERT DICKENS, INC. DBA VISTA  
RANCH WATER SYSTEM;  
RN101220911  
CCN12927

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BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

EMERGENCY ORDER  
RENEWING THE APPOINTMENT OF A TEMPORARY MANAGER  
OF A WATER UTILITY

On June 9, 2008, the Executive Director of the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") issued this Emergency Order pursuant to TEX. WATER CODE chs. 5 and 13, TEX. HEALTH & SAFETY CODE ch. 341, and 30 TEX. ADMIN. CODE chs. 35, 290, and 291. The party made the subject of this order is Bert Dickens, Inc. dba Vista Ranch Water System ("Bert Dickens, Inc.").

I.  
FINDINGS OF FACT

1. Bert Dickens, Inc. owns and operates the Vista Ranch Water System, a public water system located at the end of Country Way Road, near Smithville, Fayette County, Texas (the "Utility").
2. The Utility provides potable water service for compensation to approximately 36 service connections, or serves at least 25 people per day for at least 60 days per year, and provides water for human consumption. As such, the Utility is a public water system as defined in 30 TEX. ADMIN. CODE § 290.38(63).
3. The Utility operates pursuant to Certificate of Convenience and Necessity No. 12927.
4. Bert Dickens, Inc. has abandoned the Utility, as evidenced by the Affidavit of Andy Lutringer ("Attachment A").

5. Commission records show that the mailing address of the Utility headquarters is 268 HCR 3315, Hubbard, Texas 76648-4507.
6. No other source of water is available to the more than 108 people whose water is supplied by Bert Dickens, Inc.
7. During a records review conducted on September 1, 2007, TCEQ staff documented and now alleges that Bert Dickens, Inc.:
- Failed to collect and submit routine monthly water samples for bacteriological analysis during the months of September, October, and November 2006 and June, July, and August 2007, and failed to provide public notice of the failure to sample during the months of June, July, and August 2007, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(ii) and 290.122(c)(2)(A) and TEX. HEALTH & SAFETY CODE § 341.033(d).
  - Failed to collect and submit four repeat samples following a water sample that tested positive for total coliform in April 2007 and failed to provide public notice of the failure to collect and submit the appropriate number of repeat samples, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(3)(A)(ii) and 290.122(c)(2)(A).
  - Failed to collect at least five routine water samples during the month following a total coliform positive sample result and failed to provide public notice of the failure to collect the appropriate number of samples in May 2007, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(F) and 290.122(c)(2)(A).
  - Failed to pay all annual and late Public Health Services fees for TCEQ Financial Administration Account No. 90750039 for Fiscal Year 2007, in violation of 30 TEX. ADMIN. CODE §§ 290.51(a)(3) and TEX. WATER CODE § 5.702.
8. A potential health hazard exists as a result of the abandonment of the Utility. The Utility is not providing a licensed operator for Vista Ranch Water System. Aqua Water Supply Corporation ("Aqua WSC") is currently serving as the temporary manager of the Utility through an Emergency Order issued on December 14, 2007 and affirmed by the Commission with a modification on January 30, 2008. A temporary manager is necessary to continue operations of the Utility to ensure the quality of the water meets TCEQ rule requirements and complies with the Texas Water Code as well as the Texas Health & Safety Code, and is safe for public use and consumption.
9. This matter was referred to the Attorney General's office on February 4, 2008. On April 22, 2008, a petition was filed to appoint a receiver under TEX. WATER CODE § 13.412 to guarantee continuous and adequate service to customers of the Utility.

10. Aqua WSC has agreed to serve as temporary manager of the Utility for an additional 180 days and its mailing address is P.O. Box P, Bastrop, Texas 78602-1989. Its telephone number is (512) 303-3943.
11. This Order is necessary to ensure that continuous and adequate water service is provided to the customers of the Utility to effectuate the purposes of the Texas Water Code and the Texas Health and Safety Code.

## II. CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1, 2, and 3, Bert Dickens, Inc. operates a retail public utility as defined in TEX. WATER CODE § 13.002(19).
2. Findings of Fact Nos. 4, 6, 7, and 8 show that the Utility has been abandoned and that the appointment of temporary manager is justified as defined in TEX. WATER CODE §§ 13.412(f) and 13.4132 and 30 TEX. ADMIN. CODE § 291.142(a) and (c).
3. TEX. WATER CODE § 13.4132 authorizes the Commission to appoint a willing person to temporarily manage and operate a utility if the utility has discontinued or abandoned operations or the provision of services.
4. TEX. WATER CODE § 5.507 provides that the Commission may issue an emergency order appointing a willing person to temporarily manage and operate a utility under TEX. WATER CODE § 13.4132.
5. TEX. WATER CODE § 5.505 provides that the Commission may renew an emergency order once for a period not to exceed 180 days.
6. This Emergency Order may be issued without notice or hearing pursuant to TEX. WATER CODE § 5.501(b) and 30 TEX. ADMIN. CODE § 35.25.
7. TEX. WATER CODE § 5.501(c) and 30 TEX. ADMIN. CODE §§ 35.12 and 291.143(a) authorize the TCEQ Executive Director to issue this Emergency Order.
8. TEX. WATER CODE §§ 5.501 and 5.507 and 30 TEX. ADMIN. CODE § 291.143(a) authorize the Executive Director to appoint a person to temporarily manage and operate a utility that has discontinued or abandoned operations.

9. TEX. WATER CODE § 13.4132 provides to the temporary manager the powers and duties necessary to ensure continued operation of the utility and the provision of continuous and adequate services to customers including the power and duty to read meters, bill for services, collect revenues, disburse funds, access all system components, and request rate increases.
10. Notice of the emergency order, once it has been issued, is adequate if the notice is mailed or hand delivered to the last known address of the Utility's headquarters, in accordance with TEX. WATER CODE § 5.507. The last known address of Bert Dickens, Inc. is set forth in Findings of Fact No. 5.


### III. ORDER

1. This Order shall be effective on the date it is executed by the TCEQ Executive Director, i.e. June 9, 2008.
2. Immediately upon the effective date of this Order, Aqua WSC is hereby appointed to temporarily manage and operate the Utility.
3. Aqua WSC shall serve as temporary manager until 180 days after the effective date of this Order i.e. December 6, 2008.
4. Aqua WSC is authorized to exercise those powers and duties necessary to ensure the continued operations of the Utility and the provision of continuous and adequate services to customers, including the powers and duties set forth in TEX. WATER CODE § 13.4132.
5. Aqua WSC's requirement to post financial assurance with the TCEQ in an amount and type acceptable to the Executive Director has been waived by the Executive Director pursuant to 30 TEX. ADMIN. CODE § 291.143(c).
6. Aqua WSC's compensation will come from Utility revenues in the amount of fifteen dollars (\$15.00) per month per connection.
7. Aqua WSC shall report to the Executive Director on a monthly basis in accordance with 30 TEX. ADMIN. CODE § 291.143(h).
8. Pursuant to TEX. WATER CODE § 5.504, the Commission will consider whether to affirm, modify or set aside this Order at its regular Agenda meeting on August 6, 2008 at 1:00 p.m., at TCEQ Park 35 Complex, 12118 North I-35, Building E, Room 201S, Austin, Texas. At the August 6, 2008 Agenda meeting, Bert Dickens, Inc. may request an evidentiary

hearing pursuant to 30 TEX. ADMIN. CODE § 35.25(c) for the purpose of presenting evidence and cross-examining witnesses regarding whether to affirm, modify, or set aside this Emergency Order. An Administrative Law Judge will be present at the Agenda to immediately hear the matter should a hearing be requested.

9. . . The Chief Clerk shall provide a copy of this Order to each of the parties.

TEXAS COMMISSION ON ENVIRONMENTAL  
QUALITY

 June 9, 2008

Glenn Shankle  
Executive Director

## Attachment A


AFFIDAVIT OF ANDY LUTRINGER

STATE OF TEXAS           §  
                                  §  
COUNTY OF TRAVIS       §

BEFORE ME, the undersigned notary, on this day personally appeared Andy Lutringer, an employee of the Texas Commission on Environmental Quality, whose identity is known to me. Upon being duly sworn he stated:

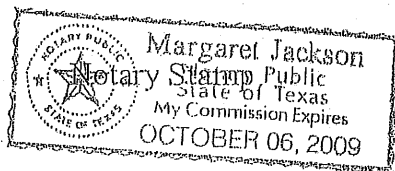
My name is Andy Lutringer. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

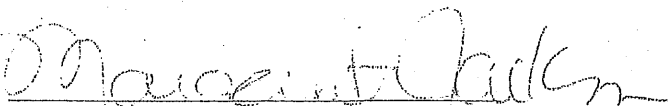
On November 15, 2007, I had a telephone conversation with Bert Dickens ("Mr. Dickens"), the President of Bert Dickens, Inc. Bert Dickens, Inc. owns and operates the Vista Ranch Water System, a public water system located at the end of Country Way Road, near Smithville, Fayette County, Texas (the "Utility"). During the telephone conversation, Mr. Dickens stated that he has abandoned the Utility.

  
\_\_\_\_\_  
Andy Lutringer  
Texas Commission on Environmental Quality

SWORN TO and SUBSCRIBED before me on this 6 day of June, 2008.

Given under my hand and seal of office this 6 day of June, 2008.



  
\_\_\_\_\_  
Notary Signature

Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Bryan W. Shaw, Ph.D., *Commissioner*  
Glenn Shankle, *Executive Director*



TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

2008 JUN -9 PM 3: 13

CHIEF CLERKS OFFICE

June 9, 2008

Mr. Jim Hering, Attorney  
Pakis, Giotes, Page, & Burleson, P.C.  
801 Washington Avenue, Eighth Floor  
Waco, Texas 76701

**Via Hand Delivery**

**Via DHL Express Delivery, Tracking No. 74886685549**

**Via Certified Mail Return Receipt Requested Article Number 91 7108 2133 3935 1950 1131**

**Via First Class Mail, Postage Pre-Paid**

Mr. Bert Dickens, President  
Bert Dickens, Inc. dba Vista Ranch Water System  
268 HCR 3315  
Hubbard, Texas 76648

**Via Hand Delivery**

**Via DHL Express Delivery, Tracking No. 74886685646**

**Via Certified Mail Return Receipt Requested Article Number 91 7108 2133 3935 1950 1148**

**Via First Class Mail, Postage Pre-Paid**

Ms. Geneva Brown Turner, Registered Agent  
Bert Dickens, Inc. dba Vista Ranch Water System  
801 Washington #800  
Waco, Texas 76701

**Via Hand Delivery**

**Via DHL Express Delivery, Tracking No. 74886685742**

**Via Certified Mail Return Receipt Requested Article Number 91 7108 2133 3935 1950 1155**

**Via First Class Mail, Postage Pre-Paid**

Re: Bert Dickens, Inc. dba Vista Ranch Water System  
Docket No. 2007-1862-UCR-E  
Notice of Emergency Order and of Hearing to Modify, Affirm, or Set Aside

Dear Mr. Hering, Mr. Dickens, and Ms. Turner:

On June 9, 2008, the Executive Director of the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") issued an emergency order reappointing Aqua Water Supply

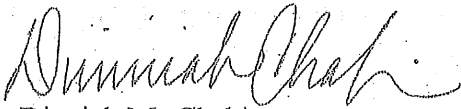
Mr. Jim Hering  
Mr. Bert Dickens  
Ms. Geneva Brown Turner  
June 9, 2008  
Page 2

Corporation as temporary manager of the Vista Ranch Water System pursuant to TEX. WATER CODE chs. 5 and 13, TEX. HEALTH & SAFETY CODE ch. 341, and 30 TEX. ADMIN. CODE chs. 35, 290, and 291 a copy of which is enclosed. The party made subject to this order is Bert Dickens, Inc. dba Vista Ranch Water System.

Pursuant to TEX. WATER CODE § 5.504 the Commission will consider whether to affirm, modify, or set aside the Emergency Order issued on June 9, 2008. Therefore, the Executive Director has scheduled this matter to be presented at the Commission's regular Agenda meeting on **August 6, 2008**. The Agenda begins at 9:30 a.m. and will be held at **TCEQ Park 35 Complex, 12118 North I-35, Building E, Room 201 S, Austin, Texas**. A copy of the record of the materials which have been submitted to the Chief Clerk's Office and will be used in the Texas Commission on Environmental Quality Agenda process will be provided to you at a later time.

Additionally, please be advised that, pursuant to 30 TEX. ADMIN. CODE § 35.25(c), you may request at the time of the Agenda an evidentiary hearing on issuance of the Emergency Order. An Administrative Law Judge will be available to conduct a hearing at Agenda on August 6, 2008, should you so request. Should you have any questions, please contact the TCEQ Litigation Division at (512) 239-3400.

Sincerely,



Dinniah M. Chahin  
Attorney  
Litigation Division

cc: Austin Regional Office, MC R-11  
Yuliya Dunaway, Enforcement Coordinator, MC R-13  
Robert Lloyd, Lloyd, Gosselink, Blevins, Rochelle & Townsend, P.C., 816 Congress  
Avenue, Suite 1900, Austin, Texas 78701

Enclosures

Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Bryan W. Shaw, Ph.D., *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

2008 JUN 18 PM 4:44

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY CHIEF CLERKS OFFICE

*Protecting Texas by Reducing and Preventing Pollution*

June 18, 2008

LaDonna Castañuela, Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087, MC 105  
Austin, Texas 78711-3087

Re: Affidavits  
Bert Dickens, Inc. dba Vista Ranch Water System  
ENFORCEMENT ID NO. 34918; RN101220911  
TCEQ DOCKET NO. 2007-1862-UCR-E

Dear Ms. Castañuela:

Enclosed for filing are the original Affidavit of Edward Riggs and the original Affidavit of Dinniah M. Chahin ("Affidavits"). Enclosed please also find one copy of this letter to you and two copies of the Affidavits. Please file stamp these documents and return them to Dinniah M. Chahin, Attorney, Litigation Division, MC 175. If you have any questions or comments, please call me at (512) 239-0617.

Sincerely,

A handwritten signature in cursive script that reads "Dinniah Chahin".

Dinniah M. Chahin  
Attorney  
Litigation Division

Enclosures

cc: Yuliya Dunaway, Enforcement Division, TCEQ, MCR-13  
Jim Hering, Attorney, Pakis, Giotes, Page & Burleson, P.C., P.O. Box 58, Waco, Texas  
76703-0058  
Robin Lloyd, Attorney, Lloyd, Gosselink, Blevins, Rochelle, & Townsend, P.C., 816  
Congress Avenue, Suite 1900, Austin, Texas 78701



AFFIDAVIT OF EDWARD RIGGS

STATE OF TEXAS

§

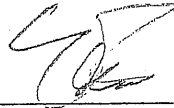
§

COUNTY OF MCLENNAN

§

My name is Edward Riggs. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On June 11, 2008, on behalf of the Executive Director of the Texas Commission on Environmental Quality, I personally hand delivered to Jim Hering (Attorney for Bert Dickens, Inc.), Geneva Brown Turner (Registered Agent for Bert Dickens, Inc.), and Kristi Guerra (Agent of Bert Dickens, President of Bert Dickens, Inc.) the June 9, 2008 Emergency Order and the notice of the Hearing to Modify, Affirm, or Set Aside the June 9, 2008 Emergency Order set for the August 6, 2008 Commission Agenda.

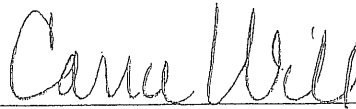
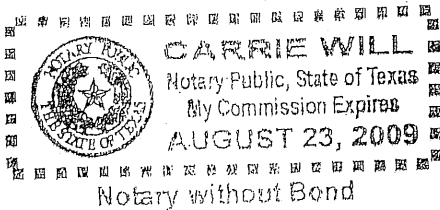


Edward Riggs

Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day appeared Edward Riggs, personally known to me to be the person whose name is subscribed to the foregoing instrument and upon his oath acknowledged to me that the facts herein are true and correct.

Given under my hand and seal of office this 16<sup>th</sup> day of June, A.D., 2008.



Notary Signature

Notary Stamp



AFFIDAVIT OF DINNIAH M. CHAHIN

STATE OF TEXAS

COUNTY OF TRAVIS

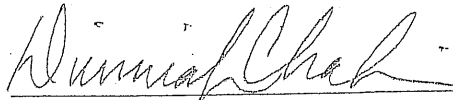
§  
§  
§

My name is Dinniah M. Chahin. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On June 9, 2008, I, Dinniah M. Chahin, on behalf of the Executive Director of the Texas Commission on Environmental Quality, sent via DHL Express Delivery (Tracking No. 74886685549), via Certified Mail Return Receipt Requested (Article No. 91 7108 2133 3935 1950 1131), and via First Class Mail, postage prepaid, to Jim Hering, Attorney for Bert Dickens, Inc., the June 9, 2008 Emergency Order and the attached Notice of Hearing to Modify, Affirm, or Set Aside the June 9, 2008, Emergency Order set for the August 6, 2008 Commission Agenda.

Additionally, on June 9, 2008, I, Dinniah M. Chahin on behalf of the Executive Director of the Texas Commission on Environmental Quality, sent via DHL Express Delivery (Tracking No. 74886685646), via Certified Mail Return Receipt Requested (Article No. 91 7108 2133 3935 1950 1148), and via First Class Mail, postage prepaid to Bert Dickens, individually and as President of Bert Dickens, Inc., the June 9, 2008 Emergency Order and the attached Notice of Hearing to Modify, Affirm, or Set Aside the June 9, 2008 Emergency Order set for the August 6, 2008 Commission Agenda.

Additionally, on June 9, 2008, I, Dinniah M. Chahin on behalf of the Executive Director of the Texas Commission on Environmental Quality, sent via DHL Express Delivery (Tracking No. 74886685742), via Certified Mail Return Receipt Requested (Article No. 91 7108 2133 3935 1950 1155), and via First Class Mail, postage prepaid to Geneva Brown Turner, individually and as Registered Agent of Bert Dickens, Inc., the June 9, 2008 Emergency Order and the attached Notice of Hearing to Modify, Affirm, or Set Aside the June 9, 2008 Emergency Order set for the August 6, 2008 Commission Agenda.



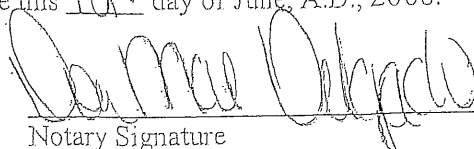
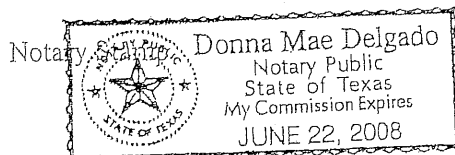
Dinniah M. Chahin

Attorney

Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Dinniah M. Chahin, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 10<sup>th</sup> day of June, A.D., 2008.



Notary Signature

